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SUMMARY RECORD OF THE 292nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 May 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Paraguay (CAT/C/29/Add.1) (continued)

1. At the invitation of the Chairman, Ms. Casati (Paraguay) resumed her place at the Committee table.

2. Mr. GONZALEZ POBLETE (Country Rapporteur) read out the Committee's conclusions and recommendations on on the second periodic report of Paraguay:

"Conclusions and recommendations of the Committee against Torture

Paraguay

The Committee considered the second periodic report of Paraguay (CAT/C/29/Add.1) at its 289th, 290th and 292nd meetings, on 2 and 5 May 1997 (CAT/C/SR.289, 290 and 292), and adopted the following conclusions and recommendations:

A. Introduction

1. The Republic of Paraguay deposited its instrument of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 12 March 1990. It has not made the declarations under articles 21 and 22 of the Convention. It is also a party to the Inter-American Convention to Prevent and Punish Torture.

2. On 13 January 1993, Paraguay submitted its initial report under article 19, which the Committee considered at its eleventh session in November 1993. Paraguay's second periodic report, which was submitted on 10 July 1996 and considered by the Committee at its eighteenth session, complies with the guidelines on the form and content of periodic reports which the Committee adopted in 1991.

B. Positive aspects

1. The Republic of Paraguay has not adopted any 'clean slate' or amnesty act.

2. Article 5 of the Paraguayan Constitution gives constitutional rank to the prohibition against torture and cruel, inhuman or degrading treatment or punishment and stipulates that there is no statutory limitation on judicial proceedings intended to punish it.

3. Under article 137 of the Constitution, international treaties, conventions and agreements, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture, once approved and ratified, form part of Paraguayan domestic law and rank higher than the laws and immediately below the Constitution.

4. The guarantees applicable to arrest and detention, which are set forth in article 12 of the Constitution, provide a legal framework which can and should help to prevent torture.

5. The constitutional provisions governing states of emergenc·· are consistent with the non-derogability provision contained in article 2, paragraph 2, of the Convention.

C. Factors and difficulties impeding the application of the Convention

1. Nearly five years after the promulgation of the Constitution of Paraguay, there has been no implementation of the decision to establish an Ombudsman, whose mandate, duties and functions offer an opportunity for effective action to promote and protect human rights and prevent torture and other cruel, inhuman and degrading treatment through systematic inspection of the places where they are reportedly practised. The Constitution also authorizes the Ombudsman to protect torture victims, investigate reports and complaints of torture and publicly condemn or report its occurrence.

2. There has been insufficient activity on the part of the Public Prosecutor's Department, as may be inferred from the report considered by the Committee, which states that, between 1991 and the date of completion of the report, criminal proceedings have been instituted in respect of physical ill-treatment by public officials in only 15 cases.

D. Subjects of concern

1. There is no definition of torture in existing legislation and the definition contained in the draft Penal Code at the current stage of its consideration by Parliament does not meet the obligation imposed on the State party by article 4 of the Convention in relation to article 1 thereof. The definition contained in the original form of the draft was inadequate and the current one is even more so.

2. The Committee has been informed by reliable sources that, although the infliction of torture and ill-treatment is no longer, as in the past, an official State policy, it is still practised by public officials, particularly in police stations and primary detention centres, in order to obtain confessions or information which are accepted by judges as grounds for instituting proceedings against the victims. The Committee is also concerned about information received from the same sources concerning the frequent physical ill-treatment of soldiers during their compulsory military service.

3. Another subject of concern to the Committee is information from the above-mentioned sources that paramilitary groups in the service of major landholders have been evicting people from land they have occupied for many years and that this activity appears to be tolerated by the State.

4. The existence of a legal arrest warrant does not, under any circumstances, justify torture. However, the fact that many arrests are made without a previously issued warrant from the competent authority and in cases other than those involving persons caught in flagrante delicto facilitates the practice of torture and cruel, inhuman or degrading treatment as a result of the clandestine circumstances in which it takes place and because the victims may remain at the disposal of their captors for longer than the 24-hour period within which detainees must, according to article 12, paragraph 5, of the Constitution, be brought before the competent judge.

5. With regard to the right of torture victims to redress and fair and adequate compensation, including the means for as full rehabilitation as possible, as provided for in article 14 of the Convention, the Committee is concerned that the report submitted by the State party makes no mention of the existence of programmes for the compensation and physical and mental rehabilitation of victims, thus leading it to believe that there are no such programmes. As to the right to fair and adequate compensation, the Committee is concerned that the State party has only subsidiary responsibility for the actions of its officials, as stated in article 106 of the Constitution, which makes victims responsible for laying claim to the assets of their torturers in order to exercise that right; the State may be required to assume responsibility only if such assets are non-existent, insufficient or cannot be found.

6. The Committee is also concerned that domestic law includes insufficient provisions prohibiting the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, as stipulated in article 3 of the Convention. Article 43 of the Constitution extends such protection only to those granted political asylum.

7. Lastly, the Committee is concerned that domestic law contains no provisions on the universal prosecution of torture or on judicial cooperation for the same purpose.

E. Recommendations

1. That the provisions on torture should be separated from the new Penal Code, currently under somewhat lengthy consideration in Parliament, and that all matters related to torture and other cruel, inhuman or degrading treatment or punishment should be included in a special act containing the provisions necessary to give effect to the provisions of the Convention. In particular:

(a) Torture should be defined in terms consistent with article 1 of the Convention and, since Paraguay is also a party to the Inter-American Convention to Prevent and Punish Torture, the definition should include a specific statement that 'torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental

capacities, even if they do not cause physical pain or mental anguish', as established by article 2 of that Convention, which the Committee has taken into consideration in accordance with article 1, paragraph 2, of the United Nations Convention against Torture.

(b) The practice of torture should in itself be punishable by law, independently of any effects on or consequences for the victim and without prejudice to any increase in penalties in view of the seriousness of such effects or consequences.

(c) Provisions to facilitate the prosecution of torture at the international level should be included in accordance with the Convention and the provisions of article 143 of the Constitution, which includes recognition of international law and the international protection of human rights among the guiding principles of Paraguay's international relations.

2. The provisions establishing the post of Ombudsman should be implemented promptly, and the act regulating his functions and setting forth the principles embodied in chapter IV, section I, of the Constitution should be promulgated promptly.

3. Rules and instructions on the matters referred to in article 11 of the Convention should be issued and systematic procedures for the supervision and monitoring of compliance therewith should be established and maintained in order to eliminate the practice of torture and other cruel, inhuman or degrading treatment or punishment.

4. Physical conditions in prisons should be improved and the conditions of prisoners' detention should be made compatible with human dignity.

5. Systematic programmes of education and information regarding the prohibition against torture should be developed and fully included in the training of the officials referred to in article 10 of the Convention.

6. The declarations under articles 21 and 22 of the Convention should be made.

7. The Committee hopes that it will soon receive the official information on the enforcement of penalties against public officials who have engaged in the practice of torture and other cruel, inhuman and degrading treatment which the representatives of the State offered to provide during the Committee's consideration of the report of Paraguay.

8. Lastly, the Committee recommends that the third periodic report of Paraguay should be submitted by the 10 April 1999 deadline."

3. Ms. CASATI (Paraguay) said that, although torture had been practised for many years in Paraguay, the State was committed to eliminating it in all its forms. Considerable progress had been made, but the problem had not been totally solved. After 34 years of dictatorship, there was a need to change

the attitudes of all members of society. Her delegation would transmit the Committee's recommendations and conclusions to the competent authorities and hoped that they would lead to progress in the near future.

4. The CHAIRMAN thanked the delegation of Paraguay for its frank dialogue with the Committee.

5. The delegation of Paraguay withdrew.

The meeting was suspended at 3.25 p.m. and resumed at 3.30 p.m.

Third periodic report of Sweden (CAT/C/34/Add.4)

6. At the invitation of the Chairman, Mr. Magnusson (Sweden) took a place at the Committee table.

7. Mr. MAGNUSSON said that some of the questions asked by the members of the Committee had been answered in the two previous reports of Sweden; his Government had believed that the Committee wished to receive only a supplementary report.

8. Replying to the question on medical professionals and officials responsible for dealing with persons who might have been subjected to torture, he said that asylum-seekers and refugees were entitled to an individual medical interview on arrival in Sweden, at which time it could be determined whether they had been tortured. Furthermore, Parliament had set aside Skr 50 million for the rehabilitation of refugees and other victims of torture, including the development of training and research methodologies. The Chancery for Persons Subjected to Torture or Other Traumatic Experiences was a small government office whose task was to facilitate the rehabilitation of torture victims and persons who had been detained under difficult circumstances or had been subjected to massive violence.

9. Under the Swedish system, local Governments were responsible for providing health care and many of them had special units which could care for persons who had been subjected to traumatic experiences. There were Red Cross refugee centres for torture victims and special centres for torture and trauma victims in Stockholm and other cities. The National Institute for Psychosocial and Environmental Medicine dealt with torture victims and a number of institutions, including the Swedish Immigration Board, had allocated funds for special assistance to Bosnian torture victims. Regular training was provided to Immigration Board staff members and to doctors who dealt with torture victims.

10. With regard to the question concerning inspections of jails and remand centres, he said that the Parliamentary Ombudsman was responsible for inspecting such facilities and could examine any documents on request. The National Secrecy Act, which established legitimate exceptions to the principle that all official documents were available to the public, specifically stated that the right to privacy did not extend to documentation requested by the Ombudsman. The Ombudsman filed a report after each inspection of a remand centre or other public facility and was responsible for bringing any evidence of ill-treatment to the attention of the Ministry of Justice. The Ombudsman

could take action on his own initiative or in response to complaints. He could meet with individual prisoners or with the Council of Prisoners, which was elected by detainees to speak on their behalf; no prison authorities were present at such meetings. The National Prison and Probation Administration was also entitled to inspect the facilities under its supervision.

11. As to the question on the rights of detainees, he explained that anyone detained for longer than six hours must be informed of the offence he was suspected of having committed and the grounds for that suspicion. The authorities were not specifically required to inform the relatives of detainees of their arrest, but it was standard practice to do so unless there was reason to fear collusion. Parliament was considering a proposal that a specific requirement that detainees should be informed of the reason and grounds for their arrest should be added to the Police Act, currently under review.

12. In reply to the question on time limits for pre-trial detention, he said that the Code of Judicial Procedure stipulated that individuals could not be held in pre-trial detention any longer than was absolutely necessary. Charges must be filed within two weeks of arrest; if the prosecutor was unable to do so, he must go before the court to request an extension, and such requests must be repeated every two weeks. The prosecutor was required to show that he was carrying out the investigation as quickly as possible. The 1976 Act on Arrested and Remanded Persons emphasized that the treatment of arrested persons must be such as to counteract the harmful consequences of imprisonment and that, if possible, measures should be taken to provide detainees with personal support or any other assistance which they might need. Special consideration was given to the health conditions of detainees and any prisoner who needed or asked to see a doctor would be permitted to do so at the earliest opportunity.

13. It was the right of the Prosecutor to decide on any restrictions to be placed on a remanded person's contact with the outside world. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had criticized conditions in Swedish prisons, alleging that detainees were given insufficient opportunities for social contact and employment and that the physical environment was inadequate, particularly at the Kronoberg Remand Prison, the largest in Stockholm, which had subsequently been rebuilt in response to criticism by both the CPT and prisoners. The CPT's recommendations on the Prosecutor's right to impose restrictions on remanded persons had led the Ministry of Justice to undertake a study of whether current regulations allowed a reasonable balance to be struck between the need to protect individual integrity and the requirements of criminal justice. Where there was a risk of collusion, in accordance with the Code of Judicial Procedure, the court could, at the request of the Prosecutor, grant him permission to place restrictions on the prisoner's contact with the outside world, including the right to make telephone calls, receive visitors or read newspapers. In the Swedish trial system, which was similar to that of other Nordic countries, the principle of oral presentation and immediacy held sway and certain prerequisites had to be met in order to establish the facts in a hearing. It was reasonable to assume that, because of that same system, the number of people deprived of their liberty and subjected to even moderate restrictions would be more numerous than in countries with different systems.

14. A statutory amendment of 1 January 1994 left it up to the court, and not the Prosecutor, to decide whether prisoners should be subjected to restrictions. That amendment did not, however, mean that during remand proceedings, the court evaluated the restrictions proposed by the Prosecutor; on the contrary, the court routinely tended to grant the Prosecutor the right to impose restrictions. The Government was studying whether the right to appeal those restrictions should not also be introduced into the rules, but the final analysis of that study was not ready.

15. With regard to time limits for detention in remand prisons and the specific case of a person who had allegedly been detained in remand for 17 to 22 months, he would need to know specifically whether, for example, the case had involved drug smuggling or persons who had filed an appeal, which could prolong the procedure. In any event, the Court of Appeals had special rules on time limits for remand: for convicted persons, the matter must be taken up within eight weeks following the judgement in the Court of First Instance and, if the appeal concerned a decision to remand, it must be dealt with immediately and not later than four weeks after judgement.

16. As to the placement of persons in compulsory care in mental hospitals under the 1992 Act, the criterion of "for one's own good" was not used. There were three requirements for compulsory psychiatric care: the patient must suffer from a severe mental disorder; the patient must be in absolute need of such care because of his or her psychiatric condition and personal circumstances and because psychiatric care would not otherwise be available; and, whether he agreed or not, the patient must manifestly not be in a condition to make a decision on such matters. Decisions to place someone in compulsory care could be appealed before the administrative courts. As of December 1996, about 10 HIV-infected individuals had been detained under the Act concerning protection against communicable diseases. While persons had been detained under that Act for various periods of time, the maximum had been one year. The Act was also under review by a parliamentary commission.

17. The conditions for compulsory treatment under the 1989 Act on the Treatment of Misusers in Certain Cases, which related to the abuse of alcohol and other substances were that the person was seriously endangering his own physical or mental health and possibly endangering his own life or that of a close relative. Such treatment could not exceed six months. It might be asked whether the substance abuser should not decide such matters for himself, but Sweden believed that society had the responsibility to prevent individuals from ruining their own life. At the Committee's request, the translation of the new Aliens Act was underway and would be sent on completion.

18. No specific statistics were available on the average amount of time aliens spent in detention, but, as of December 1996, 67 of the 260 aliens detained, had been held for less than a day; 42, for 1 to 3 days; 55, for 4 to 9 days; and 96 for more than 10 days. As to alien children, a maximum detention of 72 hours applied, except in extraordinary circumstances in which the detention could be extended for another 72 hours. Detention of aliens could also be appealed to the administrative courts and, for those submitting an application under the Aliens Act, must be reviewed every two weeks. Aliens

awaiting expulsion could be held in custody for up to two months, after which the court must again review the case. It was sometimes difficult to obtain permission from countries to readmit their own citizens, contrary to international law.

19. With regard to the status of the Conventions in Swedish law, the principle of incorporation prevailed, and that meant that ratified conventions, including the Convention against Torture, did not automatically become a part of Swedish law. The traditional method was to enact equivalent provisions in new or existing Swedish statutes, but that was not necessary if Swedish law already contained similar provisions. In the case of the Convention against Torture, Parliament had taken the view that existing law was fully in keeping with Sweden's obligations thereunder and the Convention could therefore be ratified without any new legislation being enacted.

20. Constitutional protection existed against corporal punishment, torture and medical intervention for the purpose of influencing statements. Such protection was absolute; it could not be limited by law. That meant that public officials could not be empowered to resort to such measures and there was no justification for such acts. If the acts had been committed on the orders of another person and the perpetrator had been compelled to obey those orders, there was no criminal responsibility. In cases of acts of torture, however, the provision could never be invoked to exonerate the perpetrators. The Committee had seemed to be worried about inadequate punishment for torture, but chapter 29, article 2, of the Penal Code contained special provisions for meting out such punishment, taking account of aggravating circumstances. Such circumstances were particular cruelty on the part of the convicted person; the use by the convicted person of another's vulnerable position or of his own position as a public official; and if the purpose of the crime was to abuse an individual or group because of their race, skin colour, national or ethnic origins. That adequately reflected the relevant provisions of the Convention, of which Sweden had been one of the drafters.

21. Like other Scandinavian countries, Sweden did not have a constitutional court, but the Law Council, whose functions were laid down in chapter 8, article 18, of the Constitution, was a consultative body within the Supreme Court which must be consulted by the Government before it proposed legislation to Parliament. The Government was now preparing a document that would enable the Council to look at proposals for a new Police Act. The Council met daily and held hearings with Ministry officials on how a particular proposal related to the Constitution and other laws, the clarity of the drafting and whether the proposal contained the necessary safeguards for the rule of law. The European Convention on Human Rights had recently been made a part of Swedish law and contained a provision against torture which must be taken into account during adjudication. The courts could refuse to apply a law if the law was manifestly unconstitutional or contrary to another higher law.

22. Government and public authorities were legally responsible for loss or injury suffered by individuals as a result of their acts. Such loss or injury was regulated by the Act on Liability for Damages, which contained a specific rule that the authorities responsible for an act resulting in a person being hurt were liable to pay damages. It was the task of the Chancellor for Justice to monitor the application of that law.

23. Guidelines for law enforcement personnel were contained in the Police Act. Under article 8 of the Act, coercive measures could be applied only to the extent necessary to achieve results. All such measures must be based on the principle of proportionality. Officials must have the right to use force, but only if its use was appropriate to the circumstances. That applied to all public officials and not just police officers.

24. Solitary confinement could not be used as punishment in prisons, but there were situations involving violent individuals where it was needed to ensure prison security. In conformity with the Act on the treatment of prisoners, the duration of solitary confinement could not exceed the amount of time needed to calm down the violent behaviour. It would not be fair to leave other inmates at risk of ill-treatment; a balance must be struck between various interests.

25. There were no special rules on the use of dogs. In principle, they were regarded as a necessary means of assistance in police work and both the police and the dogs were specially trained. The principle of proportionality was again applicable: if a dog was used inappropriately, the responsible officer could be charged with abuse of authority.

26. With regard to the cases of Mr. Nigretti and another prisoner who had suffocated during transfer to hospital in July 1993, to which Amnesty International had referred, the latter case had been tried by the Court of First Instance and the Court of Appeals, resulting in an indictment for involuntary manslaughter and the imposition of a suspended sentence and fines. The case had attracted a great deal of public attention and led to new rules being introduced on the transfer of inmates. A medical investigation had been undertaken, but it could not be proved that those responsible for the transfer had actually caused the prisoner's death. Another case, that of Osmo Vallo, had also received much public attention. It had been brought before the court, which had fined the officer concerned for causing bodily injury, but there were doubts as to whether the case had been fully resolved and so it had been reopened. As to why the court had considered dragging a woman by her hair to be a petty crime, he had to assume that, since the court was independent, it had undertaken a careful analysis of the facts.

27. The question of the admissibility of confessions and the way in which they were introduced as evidence in trials was being considered in Parliament. Sweden did not rule out the use of confessions as evidence insofar as the courts were free to examine all the available information. However, a confession that had been made under duress was not admissible. Sweden was of the view that its existing legislation ensured full compliance with article 15 of the Convention.

28. Mr. SORENSEN (Country Rapporteur) said that he would like clarifications of reports of pre-trial detention for extended periods, including cases in which prisoners had been kept in solitary confinement for up to 20 months.

29. Mr. MAGNUSSON (Sweden) said that he was not aware of the circumstances surrounding the cases of people who had been kept in solitary confinement for up to 20 months. The rules governing solitary confinement were being reviewed, as was the question of appeals against such detention. Further details would be submitted in writing.

30. Mr. PIKIS asked who decided whether there was a risk of collusion that warranted keeping a person in solitary confinement and whether the detainee had access to the same information and evidence as the courts.

31. He also asked whether the courts had classified the incident in which a police inspector had dragged a woman by her hair as a "petty assault" and what sentence had been handed down against the officer.

32. Mr. MAGNUSSON (Sweden) said that the wording of paragraph 30 of the report, which mentioned the incident, gave the impression that the assault had been treated lightly, but that was not the case. The police inspector had been fined and convicted, and that decision had satisfied the victim.

33. The courts decided whether there was a risk of collusion. A detainee, and his legal counsel, had the right to see all the material and evidence that was available to the court and the prosecutor.

34. The CHAIRMAN thanked the delegation of Sweden for its replies.

The public part of the meeting rose at 4.45 p.m.